

An Bille um Athchóiriú an tSeanaid, 2014

Seanad Reform Bill 2014

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht d'athchóiriú an mhodha ar a dtoghtar comhaltai
de Sheanad Éireann agus do dhéanamh socrú i
diaobh nithe gaolmhara.

*An Teachta Micheál Ó Múirtín a thug isteach,
4 Feabhra, 2014*

BILL

(as initiated)

entitled

An Act to reform the method of election of members
of Seanad Éireann and to provide for related
matters.

*Introduced by Deputy Micheál Martin,
4th February, 2014*

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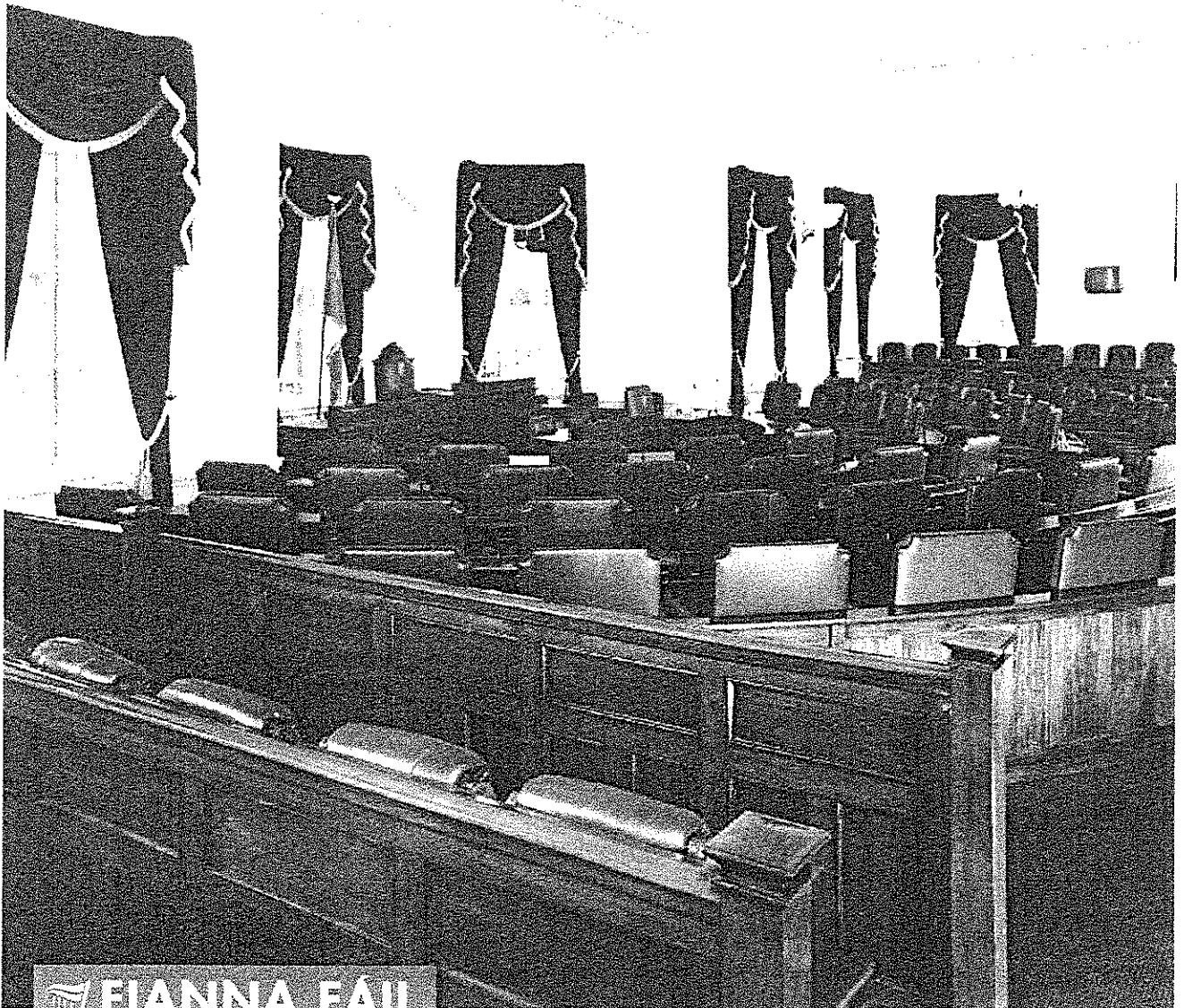
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A Seanad for the People



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A SEANAD FOR THE PEOPLE

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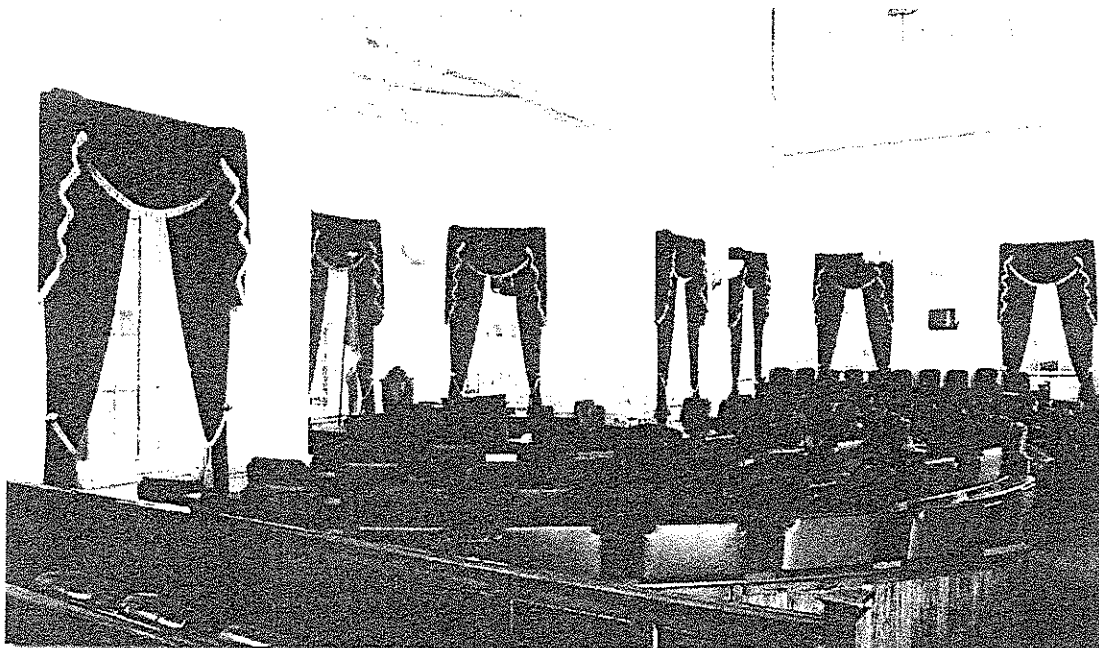


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Executive Summary

The economic crisis has illustrated the need to make our political system fit for purpose in 21st century Ireland. Political reform must reach from local government to the Cabinet with a reformed Seanad playing an integral role in refreshing political debate, enhancing legislative scrutiny and broadening representation. In contrast with the cynical smokescreen reform of the government, Fianna Fáil proposes **a radical reform agenda** that will give the public a real choice in the Seanad's future between our ideas for reform in contrast to the crude yes or no question posed by the government's proposal.

Fianna Fáil's proposals have two primary aims for the Seanad:

1. **Act as a check on government power and scrutinise legislation**
2. **Broaden representation and provide a voice for groups that would not be heard in Dáil Eireann**

A number of key changes are necessary to transform the Upper House and turn it into a Seanad for the people.

Key measures

1) Direct national elections for 40 Senators

Expanding the franchise for Seanad elections copper fastens its democratic legitimacy while broadening the electoral base and attracting candidates who would not normally enter into political life. Different terms will also help create a separate identity from Dáil Eireann.

2) A reduced Seanad of 51 Senators

A smaller Senate elected on a separate franchise will be more effective in holding the government to account while reducing the number of national politicians in the country in line with international standards.

3) Reduced cost

All institutions of state have to provide value for money. However, misleading government claims about the cost of the Seanad should not distract from the need to provide an effective check and balance on the government. Our proposals save the exchequer money while maintaining the balance of our constitutional architecture.

4) 50% gender quotas for political party candidates in direct elections

A reformed Seanad represents an opportunity to tackle the deeply ingrained problem of gender inequality in politics. 50% Gender Quotas for parties in the direct election lists will help ensure that the Upper House leads the way in breaking the glass ceiling for women in politics.

5) Specific minority group representation

Utilising the Taoiseach's nominee's provision with a clear regard for specified groups will ensure that groups on the margin of Irish political life are enabled to have their voices heard in the National Parliament.

6) Three senators elected from Northern Ireland

Facilitating representation from Northern Ireland is an important role that the Seanad can play building stronger North-South links.

7) Enhanced powers of legislative scrutiny and initiative

Providing a check on government power is a core part of the Seanad's role. New powers will enhance this position to guarantee the Seanad's capacity to hold the government to account.

8) Enhanced EU Role

The EU provides a constant stream of directives and instruments that shapes Irish law. The Seanad can play an important part in fully utilising the new powers under the Lisbon treaty that facilitates National Parliaments playing a role in shaping EU legislation by reviewing each initiative.

9) Broader scope for Ministerial appointment

Attracting talented people into political life is a key part of how we are going to emerge from the economic crisis. The Seanad provides a route for appointing accomplished personnel drawn from outside the political world that can tackle national problems with a fresh perspective.

Introduction

Ireland needs real political reform. The economic crisis has shown the limits of our structures of government. Any parliament where financial regulation is only mentioned three times in the years leading up to a banking crisis suffers from a real lack of perspective and depth.

We need to have a root and branch reform of the institutions of the State, reviewing all aspects of how we make the decisions that govern us as a people and recasting our constitutional architecture to achieve the common good.

At stake is the potential for our democracy to thrive and flourish into the future. Seanad reform forms one part of the bigger picture of re-shaping Irish politics.

"At stake is the potential for our democracy to thrive and flourish into the future."

The failure of the government to implement a comprehensive package of political reform measures means that the abolition of the Seanad will be little more than a cynical sideshow, diverting attention from their inaction on creating a new politics. The severe limits placed upon the Constitutional Convention avoids the big issues of Irish politics exposes the lack of ambition and imagination by the government for far reaching reform. All the while the government continues to ruthlessly dominate the Dáil by guillotining bills and ramming through legislation. A referendum on the Seanad is little more than smokescreen reform that will disrupt a significant part of our constitutional architecture with no clear thought on what impact it will have. Abolition is the ultimate power grab.

"Abolition is the ultimate power grab."

In light of the continued failure of the government to take on the challenge of real and meaningful reform Fianna Fáil believes that Seanad Éireann should be reformed rather than abolished. Serious reviews of the Constitution involving academic constitutional experts and political scientists have not seriously recommended its abolition but rather have set forward agendas for its radical reform.

The 1997 All-Party Oireachtas Committee on the Constitution concluded any savings achieved by its abolition would be illusory because some functions would have to be reallocated to other parts of the political system. The impact of its removal is deeply uncertain as it concentrates power into the fewer and fewer hands of an unprecedented government majority.



We fully recognise that serious questions must be asked about the continued role of Seanad Éireann if, after three quarters of a century, it is struggling to justify its existence. Our proposals answer those legitimate questions by building on the work of expert reviews and the lessons of the past few years. It puts forward a fresh vision for a Seanad that will act as a check on the government, scrutinise legislation, represent voices that would otherwise not be heard in the national parliament and provide a forum for non-partisan debate and discussion. In short, it gives the Seanad a meaningful role in Irish political life separate and independent from Dáil Éireann.

Basing fundamental constitutional decisions on short term party calculations undermines the strength and stability of the state. Real leadership focuses the problems of the state in their mind's eye and looks to what kind of country we want in the future. This crisis represents an opportunity to grasp the nettle, think big and implement real reform that will benefit generations to come. Real Seanad reform is a step along the road of re-building and strengthening our institutions to meet the challenges and demands of modern Ireland.

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The failure of the Seanad to carve out a distinctive role separate from the Dáil and independent from the government and the party whip system has undermined its original chamber. Any proposal to reform Seanad Éireann must deal with 4 crucial questions concerning the Upper House. These are:

- (a) Why Ireland needs an Upper House?
- (b) Does the current cost of Seanad Éireann justify its retention?
- (c) What should Seanad Éireann do?
- (d) How should Seanad Éireann be elected?

Fianna Fáil's proposal for the future of the Seanad aims to answer those pressing questions through a set of ideas that will help to re-invigorate Irish politics.



Why Ireland needs an upper house

Ireland needs an Upper House. There are a number of major reasons why Ireland should maintain a bi-cameral legislature.

- (i) Upholds constitutional stability
- (ii) Acts as check on government
- (iii) Scrutinises legislation
- (iv) Avoids parochialism
- (v) Broadens representation
- (vi) Creates a forum for cross party debate and discussion

- (i) Bunreacht na hÉireann was introduced in 1937 and has served this country well. Irish democracy is built on three organs of State - the Executive (government), the legislature (Houses of the Oireachtas and President) and the judiciary (the Courts). Major interference in the tripartite system that underpins our democracy is not merited since Bunreacht na hÉireann has shown itself to be strong and flexible in protecting the principles of Irish democracy.

"In the international context an upper house plays a significant role in liberal democracies across the globe."

"Abolishing Seanad Éireann will result in a further diminution in the ability of the legislature to hold the government to account"

In the international context an upper house plays a significant role in liberal democracies across the globe. Within the thirty-four developed countries of the OECD, nineteen have bicameral parliaments (56%), with eleven of those in unitary countries like Ireland. There are thirteen bicameral parliaments in the twenty-seven EU member states (48%).

- (ii) The weakest part of our constitutional tripartite system is the legislature (Houses of the Oireachtas). At present, the legislature is under the control of a government with an unprecedented Dáil majority. An active legislative that scrutinises the work of the government is an essential feature

of a functioning representative democracy. At present in Ireland, the legislature does not hold government to account. In fact, it creates and then becomes a servant of government. The whip system operative in Ireland means that the government effectively controls the legislature. Abolishing Seanad Éireann will result in a further diminution in the ability of the legislature to hold the government to account.

- (iii) Seanad Éireann slows down potentially hasty government decisions and acts as a check and balance against strong government majorities. It provides an opportunity for a more cross-party approach to legislation in a non-confrontational atmosphere. Governments supported by large Dáil majorities can effectively steer through whatever measures they wish. Sometimes government needs to be slowed down to prevent reactionary or ill thought out measures. The removal of a second house will give greater powers to a dominant government to introduce hasty, reactionary and ill-considered legislation. Academic studies have shown the positive impact that an upper chamber has had internationally even with limited powers on the legislative process. For example, in 2001 the government withdrew a proposed ban on opinion polling, which had been added to the *Electoral (Amendment) Bill 2000* as it went through the Dáil. The ban was removed after a loophole was identified during a Seanad debate.

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- (iv) Irish politics is dominated by a concentration on local issues. In order to be elected to Dáil Éireann candidates need to devote inordinate amounts of time to constituency work and advocating constituency issues. Consequently, parochialism plays a significant part in the make up of Dáil Éireann. Councillors and TDs who are elected as representatives of certain geographical areas must devote significant time and present issues in a way that suits, or does not antagonise, their constituencies. It is important that there be an Upper House that provides a different type and

presentation of politics. In the past the Seanad has provided such an outlet. For example, the work of Mary Robinson in relation to women's rights and access to contraceptives during an era when such issues were not discussed by the main parties. Without such an Upper House politics in Ireland risks becoming overly

focused on local issues at the expense of broader perspectives. The richness of diverse political debate will be lost.

- (v) An upper house provides an opportunity to provide a platform for marginalised groups and ensure that all sectors of society have a voice in parliament. The positive impact of an upper house on legislation, as studies have shown, is reliant upon it having a different voice than the lower chamber.

"An upper house provides an opportunity to provide a platform for marginalised groups and ensure that all sectors of society have a voice in parliament."

The original conception of the Seanad on the basis of vocational panels representing agriculture and industry etc as well as University seats bears testament to that. The original Seanad under the 1922 Free State constitution was designed to ensure that the Unionist community had a voice in parliament. However the flawed electoral system for the panels undermined the original vision of representing a wide spectrum of Irish life.

A renewed Seanad should re-focus on the objective of encompassing a broader sense of representation including groups who would otherwise not have a voice in the Oireachtas. This would avoid what De Tocqueville famously called the "*Tyranny of the Majority*". This vision would reflect broader groups that have come into Irish life such as the New Irish and other minority or marginal groups such as the Traveller community and the Irish Diaspora.

"The Seanad should be a forum where party affiliation does not completely dominate debate as in the lower house."

- (vi) The Seanad helps to reduce party power and foster non-partisan discussion. The Irish political system is dominated by the executive and the party whip system which ensures that party members do not go against the set party line. This system limits free debate and discussion. A properly functioning upper house offers an opportunity to blur party

memberships and create a more constructive environment for dialogue through a separate electoral system and role in the parliament. The Seanad should be a forum where party affiliation does not completely dominate debate as in the lower house.

A new Electoral System for the Seanad

The Seanad must be distinctly different from Dáil Éireann in order to ensure it offers a genuine alternative voice in scrutinising legislation and holding the government to account. Fianna Fáil proposes:

- (i) Reducing the Seanad to 51 Senators.
- (ii) All registered voters, encompassing the diaspora using mechanisms discussed in the Constitutional Convention, rather than elite groups such as Councillors and/or university graduates, should be given a vote in Seanad elections. Registered Voters should elect the majority of Senators. 40 Senators should be directly elected. This bears testament to the role of the Seanad in broadening representation and providing an alternative voice. The university seats should be abolished.

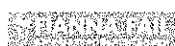
"Separate term lengths for the upper house are used in France and the USA to help ensure the upper chamber is less partisan."

- (iii) The term of the Seanad should be maintained at 5 year intervals but elections should be held in conjunction with Local/European elections. This would completely differentiate the Seanad from the Dáil, foster greater experience, non-partisanship and help ensure it is no longer treated as a simple route to the Dáil or a fall back for failed Dáil candidates. Separate term lengths for the upper house are used in France and the USA to help ensure the upper chamber is less partisan.

- (iv) In total Forty Senators should be elected by the people. Ten Senators would be elected in each of the four European Constituencies by proportional representation. In most cases internationally the second chambers are directly elected.

- (v) Every registered political party that wishes to run more than one candidate in a constituency would be required to ensure that there is gender equality in its candidate choice. In effect, this creates a 50/50 approach to party tickets, ensuring the Seanad leads the way in

"this creates a 50/50 approach to party tickets ensuring the Seanad leads the way in achieving gender equality."



achieving gender equality.

- (vii) The Government subject to Dáil approval rather than the Taoiseach would thereafter nominate 8 Senators. In respect of his 8 nominations, the government would be obliged to select a Senator representing each of the following groups:

- I. The Elderly
- II. The Young
- III. The New Irish Community
- IV. The Diaspora
- V. People with Disabilities
- VI. Sporting Organisations
- VII. The Arts
- VIII. The Traveller Community

This will help ensure a broader representation drawing from a more diverse range of opinion and society than previously allowed for or possible in the Oireachtas.

- (iii) Any Senator who wishes to contest a Dáil Election would be required to resign his Seanad seat in order to contest that election.
- (iv) 3 Senators will be directly elected from Northern Ireland. The format of the election will be set up in conjunction with efforts to allow the Irish citizens outside of this jurisdiction to vote in Presidential elections as discussed in the constitutional convention.

"The advantage of this relatively simple system would be that the Seanad would be noticeably different from Dáil Éireann."

The advantage of this relatively simple system would be that the Seanad would be noticeably different from Dáil Éireann. It would not be elected based on small geographical areas or parochial issues. The broader constituencies and multiplicity of issues within them will attract a different type of candidate than those competing for the Dáil.

A Cost Effective Seanad

The Seanad is costing too much to operate. The annual expense of running Seanad Éireann for 2013 will be €9.2 million. Despite misleading and inaccurate government claims about the cost of the Seanad Fianna Fáil fully recognises that the cost of Seanad Éireann needs to be reduced. Fianna Fáil believes that the following proposals reducing the cost of the Seanad will ensure a cost efficient Upper House:

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- (i) The number of Senators should be reduced from 60 to 51.
- (ii) Senators should be paid an annual salary of €50,000. This would result in a €2.55 m cost of the Senators per annum
- (iii) Senators should only be entitled to receive vouched expenses.
- (iv) Senators should devote themselves fully to their job as Senators and should have no doubt that their primary and most important function is to be a legislator involved in the process of national legislation.
- (v) The Seanad should sit normal working hours, Monday to Friday. Combined with the strong gender quota system put in place for national direct elections, this will help ensure the Seanad is an attractive, family friendly option for women to enter political life.

The 1997 All-Party Oireachtas Committee on the Constitution concluded any savings achieved by the abolition of the Seanad would be illusory because some functions would have to be reallocated to other parts of the political system. Taking the measures outlined above would reform the structure and function of the Seanad to ensure its delivered value for money and real savings to the exchequer.

The Government has founded its campaign for abolition on unsubstantiated claims that abolishing the Seanad would save €100m over the course of a five year Dáil Term. In reality the House of the Oireachtas Finance Section has stated that running the Seanad costs €9.2m. The focus on illusionary savings highlights the crude non-factually based approach to profound constitutional change that the government is taking.

New Functions for the Seanad

At present the Upper House seeks to discuss relevant issues of the day by way of matters on the order of business, adjournment and debates and votes on all legislation. It needs to expand its functions to areas not effectively covered by Dáil Éireann, enhance its powers of legislative scrutiny at both national and European level and help ensure that Ireland has high quality, probing debate and national representatives in order to justify its retention. It is proposed that a new reformed Seanad Éireann should be responsible for the following:

- (i) Continuing its current function in respect of legislation, namely that legislation must be passed by Seanad Éireann in order for it to become law. Legislation should be initiated by Senators with expanded time for Private Members business under a new PMB Day. The delaying powers of the Seanad should be extended from 90 to 180 days in order to strengthen its power of scrutiny while still avoiding the possibility of legislative gridlock. The Seanad should become the House from which serious and well considered Private Member Bills emanate.

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- (ii) Seanad Éireann should play an increased role in the supervision of our relationship with the European Union. In particular, members of the European Parliament should be required to report on a quarterly basis to Seanad Éireann. This would create a formal link between the Oireachtas and our representatives in Europe that does not currently exist. All European Regulations, which are directly effective, should be discussed and debated by Seanad Éireann.

"Members of the European Parliament should be required to report on a quarterly basis to Seanad Éireann."

All European Directives which are required to be implemented into Irish law should be discussed and debated in Seanad Éireann. Furthermore, the Lisbon treaty gives specific powers for national Parliament to have an input into EU legislation that should be fully utilised by the Oireachtas. At present, no State Entity is aware of how many European Directives are required to be implemented into Irish law. The Seanad should be a body that reviews, supervises and has a input into the development



(v) The Seanad should vet all major state appointments by the Government and there should be a requirement that any recommendation by the Seanad on any such proposed appointee must be taken into consideration by the Government in deciding on that appointment. The Seanad should be able to subject candidates to a rigorous questioning that will test their suitability for the position, similar to the US Senate approach. This enhanced level of scrutiny will ensure high calibre candidates who enjoy the public trust are appointed to important state positions.

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(vi) The constitution currently allows for two Cabinet Ministers to be appointed from the Seanad. This provision has only been used twice in the history of the state. Once in 1957 to appoint Sean Moylan as Minister for Agriculture and again in 1981 to appoint James Dooge as Minister for Foreign Affairs.

Creating a deeper pool of talent drawn from various aspects of Irish life with a democratic mandate would enhance the strength of the government. The overhaul of the Seanad electoral system and the need to ensure that Ireland has a high quality of Cabinet Minister means that the limit on the number of Ministers from the Seanad should be removed. This would allow the Government the flexibility to draw from a broader base and would ameliorate the difficulties that a constituency focus has had on national representatives.

Conclusion: A new future for the Seanad

Overhauling the Seanad is one step along the path of re-invigorating Irish politics to make it fit for purpose in the modern Irish state. Our vision identifies the current problems with the Seanad and sets out a clear set of proposals to create a Seanad that will work for the Irish people providing a distinctive and challenging voice in Irish political life. The crude option for abolition offered by the government reflects an obsession with short term political gain that will come at the expense of the constitutional architecture of the state. Abolition is the ultimate power grab.

Achieving gender equality, radically widening the breadth of representation, transforming the powers and reducing the cost of the Seanad will help create an upper house that makes a real contribution to Irish political life. Fianna Fáil believes that presenting the people with a radical and innovative proposal will give the Irish people a real choice not simply the cynical ploy the government is pursuing.

The current crisis presents an opportunity to re-shape our state to ensure it is fit for purpose. It is a chance to make brave decisions and build on the constitutional heritage bequeath to us by the generations who have gone before. A Seanad that really works for the Irish people is a single step along that path. This proposal is a positive measure towards a creating political system that rises to the challenge.

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